

FILED

2008 JUL 24 PM 3:52
CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
LOS ANGELES

1 BARBARA A. JONES (CA State Bar No. 88448)
2 AARP FOUNDATION LITIGATION
3 200 So. Los Robles, St 400
4 Pasadena, CA 91101
5 Telephone: (626) 585-2628
6 Facsimile: (626) 583-8538
7 E-Mail: bjones@aarp.org

8 Stacy Canan, *Pro Hac Vice Pending*
9 AARP Foundation Litigation
10 601 E. Street, N.W.
11 Washington, D.C. 20049
12 Telephone: (202) 434-2060
13 Facsimile: (202) 434-6424
14 E-Mail: scanan@aarp.org

15 Attorneys for [Proposed] Amicus Curiae AARP

16
17 **IN THE UNITED STATES DISTRICT COURT**
18 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
19 **(WESTERN DIVISION-LOS ANGELES)**
20

21 Independent Living Center of Southern
22 California, *et al.*

23 Petitioners,

24 v.

25 SANDRA SHEWRY, Director of the
26 Department of Health Care
27 Services, State of California;
28 *et al.*,

Respondents.

Case No. 08-cv-03315-CAS-MAN(X)

NOTICE OF AARP'S *EX PARTE*
APPLICATION TO FILE AMICUS
CURIAE BRIEF; *EX PARTE*
APPLICATION; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT; DECLARATION OF
BARBARA A. JONES

Hon. Christina A. Snyder
Courtroom: 5

1 **NOTICE OF EX PARTE APPLICATION TO FILE AMICUS BRIEF**

2 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF

3
4 RECORD:

5 PLEASE TAKE NOTICE that pursuant to Local Rule 7-19, AARP, by and
6 through counsel, will request permission to file an *amicus curiae* brief. AARP's
7 *Ex Parte* Application will be decided in Courtroom 5 of the above-entitled court,
8 located at 312 N. Spring St, Los Angeles, California 90012. This application is
9 accompanied by the Memorandum in Support that follows (and supporting
10 declaration), a proposed *Amicus Curiae* Brief of AARP, a Proposed Order, and a
11
12 FRCP Rule 7.1 Certificate.
13

14 Counsel for AARP contacted counsel for the Petitioners and Respondents.
15
16 Both parties have consented to AARP's filing of an *amicus curiae* brief. Deputy
17 Attorney General Sara Ugaz who informed me that the Respondents would
18 not oppose AARP's filing of the brief can be reached through the California
19 Attorney General's main number (213) 897-2000. Lynn Carman, Counsel
20 for Petitioners, can be reached at (415) 927-4023. Stanley Friedman,
21 Counsel for Petitioners can be reached at (213) 629-1500.
22
23
24
25
26
27
28

CORPORATE DISCLOSURE STATEMENT

Federal Rule of Civil Procedure; 7-1 Corporate Disclosures

Pursuant to Fed. R. Civ. P. 7.1, the undersigned counsel for *Amicus Curiae* states that there is no parent corporation, or publicly held company that owns 10% or more of the stock, of *Amicus Curiae*. The Internal Revenue Service has determined that AARP is organized and operated exclusively for the promotion of social welfare pursuant to Section 501(c)(4) (1993) of the Internal Revenue Code and is exempt from income tax. AARP is also organized and operated as a non-profit corporation pursuant to the provisions of Title 29 of chapter 6 of the District of Columbia Code 1951. Other legal entities related to *amicus curiae* AARP include AARP Foundation, AARP Services, Inc., Legal Counsel for the Elderly, AARP Financial, AARP Global Network and Focalyst.

MEMORANDUM IN SUPPORT

I. INTRODUCTION

AARP, by and through counsel, move in this case for *amicus* status and for its accompanying *amicus* brief to be deemed filed. For the reasons set forth below, the proposed *amicus curiae*, AARP has a strong interest in the outcome of the action. In addition, by virtue of its direct involvement in the issues presented in the pending motion and before the court, as well as its experience in Medicaid, AARP believes that this brief will be useful to the court in deciding the matters before it. Finally, AARP is uniquely situated to assist the court in determining the irreparable harm to California's Medi-Cal recipients.

By participating as *amicus*, AARP would have a meaningful voice in this case of high public importance to its approximate 3.4 million California members as well as other Medi-Cal recipients. Its participation will enhance the Court's review of the case but will not unduly burden the Court or other parties. The Respondents, likewise would not be prejudiced by the filing of the brief. A virtually identical brief was served on the Respondents in the case of *California Medical Association v. Sandra Shewry*, LA Superior Court Case No. BC 390126 on June 30, 2008.

INTERESTS OF AARP

AARP is a nonpartisan, nonprofit membership organization with nearly 40 million members nationwide age 50 or older. Approximately, 3.4 million AARP

1 members live in California alone. Access to health care is a top priority for AARP.
2 As the country's largest membership organization, AARP seeks through education,
3 advocacy and service to enhance the quality of life for all by promoting
4 independence, dignity, and purpose. In its efforts to promote independence, AARP
5 works to foster the health and economic security of individuals as they age by
6 advocating for access to affordable health care. AARP provides information and
7 resources and advocates on legislation and legal issues for members and other
8 citizens, including low-income Medicaid beneficiaries who will be seriously
9 affected if the Medi-Cal provider rates are cuts. AARP's members who receive
10 Medi-Cal will be directly affected by this court's decision.
11
12
13

14 Furthermore, AARP has participated either as a party or as an amicus in
15 significant Medicaid decisions issued by California and Federal appellate cases,
16 including *Conlan v. Shewry* (2005) 131 Cal. App. 4th 1354 *Oak Crest Village v.*
17 *Murphy* (Md. Ct. App. 2004) 841 A.2d 816; *Markva v. Haveman* (6th Cir. 2003)
18 317 F.3d 547. *Westside Mothers v. Havemen*, 289 F.3d 852 (6th Cir. 2002), *cert.*
19 *denied*, 537 U.S. 1045 (2002); *Sabree ex rel. Sabree v. Richmond*, 367 F.3d 180
20 (3rd Cir. 2004); *Watson v. Weeks*, 436 F.3d 1152 (9th Cir. 2006).
21
22
23

24 AARP attorneys have also represented Medicaid beneficiaries in cases such
25 as *Ball v. Rodgers*, 492 F.3d 1094 (9th Cir. 2007) (seeking home and community
26 based services and due process prior to termination or reductions in Medicaid
27 services on behalf of home health care recipients); *Lankford v. Sherman*, 451 F.3d
28

1 496 (8th Cir. 2006) (challenging a state regulation curtailing the provision of
2 durable medical equipment to Medicaid recipients); *Md. Dept. of Health and*
3 *Mental Hygiene v. Brown*, 935 A.2d 1128 (Md. Ct. Spec. App. 2007) (challenging
4 Maryland standards for determining for Medicaid waiver eligibility).
5

6 In addition, AARP has represented the interests of its members and
7
8 Medicaid recipients before the California's legislature and U.S. Congress on both
9 Medicaid and Medicare legislation.

10 **III. ARGUMENT**

11 **A. The Court has Authority to Allow *Amicus* Participation**

12 Although no Federal Rule of Civil Procedure governs participation by
13
14 *amicus curiae*, District Courts have broad discretionary authority to grant *amicus*
15 status. See *Hoptowit v. Ray*, 682 F.2d 1237, 1260 (9th Cir. 1982) (District Court
16 *sua sponte* appointed *amicus*); *Funbus Systems, Inc., v. State of California Public*
17 *Utilities Commission*, 801 F.2d 1120, 1125 (9th Cir. 1986). As is the case with
18
19 AARP, an *amicus* need not be impartial to the outcome of the case. *Hoptowit*, 682
20 F.2d at 1260.
21

22 An *amicus* need not demonstrate any formal prerequisites. Instead, courts
23
24 often welcome the participation of an *amicus* who will offer information that is
25 both timely and useful, including information that will aid the court's
26 understanding of the case and the potential ramifications of the resolution of the
27 case. *Amicus* also can help the court by "assisting in a case of general public
28

1 interest, supplementing the efforts of counsel and drawing the court's attention to
2 law that might otherwise escape consideration." *Funbus Systems*, 801 F.2d at
3 1125.
4

5 A case from the Third Circuit, authored by then-Judge, now-Justice Samuel
6 Alito, extensively analyzed the *amicus* issue. *Neonatology Associates, P.A. v.*
7 *Comm'r IRS*, 293 F.3d 128, 132 (3rd Cir. 2002) (single judge). The Court outlined
8 some of the benefits *amicus curiae* can provide, including presenting background
9 or factual information, offering special expertise, briefing points not emphasized
10 by existing parties, and explaining the potential impact of a decision on a group.
11 *Id.* at 132 Finally, the Court discussed safeguards that can be employed to
12 ensure that an *amicus curiae* does not unduly burden the court and other parties.
13 Justice Alito explained that the Court should grant *amicus* status, noting that if the
14 *amicus* brief turns out to be unhelpful or duplicative, the court may simply
15 disregard it. *Id.* Consistent with the Ninth Circuit precedent and Justice Alito's
16 reasoning, this Court should exercise its discretion to allow AARP to participate as
17 *amicus*.
18
19
20
21

22 **B. AARP Will Assist in the Resolution of this Case and Will Not**
23 **Unduly Burden the Court or Parties**

24 This is a case of significant public interest as it will directly affect access to
25 health care by California's poor. AARP has significant health care and Medicaid
26 expertise which can aid the Court in determining the full ramifications of its
27
28

1 decision to recipients of Medi-Cal who are not represented in this proceeding.

2 AARP's participation as *amicus* will not unduly prejudice any party to this action.

3
4 So as to minimize the burden on the Court and all the parties, AARP files this
5 motion and attached brief on the date that the Plaintiff/Petitioner's brief is due.

6 AARP will abide by any restrictions the Court deems necessary.

7
8 **IV. CONCLUSION**

9 In light of the significant impact this case will have on AARP's California
10 members, AARP respectfully requests that this Court grant its *Ex Parte*
11 Application to participate as *Amicus Curiae*.

12
13 Dated: July 24, 2008

14 Respectfully submitted,

15
16 

17 Barbara A. Jones
18 AARP FOUNDATION LITIGATION
19 200 So. Los Robles, St 400
20 Pasadena, CA 91101
21 Telephone: (626) 585-2628
22 Facsimile: (626) 583-8538
23 E-Mail: bjones@aarp.org

24 Stacy Canan, *Pro Hac Vice Pending*
25 AARP Foundation Litigation
26 601 E. Street, N.W.
27 Washington, D.C. 20049
28 Telephone: (202) 434-2060
E-Mail: scanan@aarp.org

DECLARATION OF BARBARA A. JONES

I, BARBARA A. JONES, declare as follows:

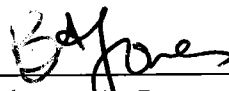
1. I am an attorney duly licensed to practice law in this Court.

I am an attorney with the AARP Foundation and one of AARP's counsel of record herein. The facts stated herein are personally known to me, and if called as a witness I could and would competently testify to them.

2. I have contacted counsel for Petitioners and Respondents regarding this Ex Parte Application and counsel. Both Petitioners and Respondents counsel have informed me that they will not oppose AARP's Request to file an *amicus* brief.

3. Deputy Attorney General Sara Ugaz who informed me that the Respondents would not oppose AARP's filing of the brief can be reached through the California Attorney General's main number (213) 897-2000. Lynn Carman Counsel for Petitioners can be reached at (415) 927-4023. Alternatively, Stanley Friedman, Counsel for Petitioners can be reached at (213) 629-1500.

I declare this to be true under the penalty of perjury. Executed on July 23, 2008 in Pasadena, California.



Barbara A. Jones